



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

CERTIFIED MAIL RETURN RECEIPT REQUESTED

July 18, 2011

Regulatory Division SPK-2011-00608

James and Kay Bianco

~~ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED~~

Dear Mr. and Mrs. Bianco:

I am writing to you concerning the unauthorized discharge of approximately 120 linear feet of riprap and dirt fill material into approximately 0.17 acres of wetlands on your property. The subject site is located adjacent and along the north bank of the East Inlet to Grand Lake, within the Town of Grand Lake, within Section 9, Township 9 North, Range 75 West, Latitude 40.2366°, Longitude -105.8021°, Grand County, Colorado.

The U.S. Army Corps of Engineers' regulatory responsibilities under Section 404 of the Clean Water Act establishes jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands. Certain activities, including mechanized land clearing, that result in the discharge of dredged or fill material into waters of the United States require a Department of the Army authorization prior to starting work.

Based on an on-site investigation of the subject property on June 29, 2011 by Travis Morse of my staff and a review of in-office resources which included the assessment of aerial photographs, resource maps, and previous correspondence sent by our office to you in 1991, 1997 and 1998, it was confirmed that areas within your property are subject to regulation by the U.S. Army Corps of Engineers. The investigation determined that land clearing and the discharge of dirt and riprap fills have been performed in waters of the U.S. regulated by the U.S. Army Corps of Engineers without a Department of the Army permit. As a result, you are in violation of the Clean Water Act.

We are conducting an investigation to determine the impact of this work as it relates to public interest and the appropriate course of action to remedy the situation. An extract of the law is enclosed. By copy of this letter, we are soliciting the views of appropriate Federal, State, and local agencies, which may also have jurisdiction, regarding this activity. Based upon your responses to this notice, comments received from the agencies and any available information, we will determine the appropriate course of action to resolve this violation.

To ensure that all pertinent information is available for our evaluation and included in the public record, you are invited to provide any information which you feel should be considered. Pertinent information could include name, address, and phone numbers of contractors involved in this effort, any permits you may have applied for, purpose of the activity and your plans for utilization of the completed work and your evaluation of the need to retain this fill may be of particular significance in determining what actions are to be taken. Since the information provided will become a part of the public record, it may be presented in any court action that could result from this investigation and will be retained in our files. Any information you wish to provide should reach this office no later than **August 8, 2011**. We appreciate your cooperation and timely action on this matter.

Please refer to identification number SPK-2011-00608 in any correspondence concerning this project. If you have any questions, please contact Mr. Travis Morse at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 134, Grand Junction, Colorado 81501, email w.travis.morse@usace.army.mil, or telephone (970) 243-1199, extension 17. For more information regarding our program, please visit our website at www.spk.usace.army.mil/regulatory.html.

Sincerely,

CONCUR

Nall *SB Nall*

Morse/tsj/243-1199

18Jul11/(1145)

Susan Bachini Nall

Chief, Colorado West Regulatory Branch

Enclosure:

Appendix A - Extract of the Clean Water Act

Copies furnished without enclosure:

Ms. Monica Heimdal, 8ENF-W, Water Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129

Mr. Al Pfister, U.S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946

Ms. Paula Belcher, Bureau of Land Management, Post Office Box 68, Kremmling, CO 80459

Mr. Larry Gamble, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517

Mr. Lyle Sidener, Colorado Division of Wildlife, P.O. Box 216, Hot Sulphur Springs, CO 80451

Mr. Shane Hale, Town of Grand Lake, Post Office Box 99, Grand Lake, CO 80447

Ms. Kristen Manguso, Grand County Administration Building, Post Office Box 239, Hot Sulphur Springs, CO 80451

Appendix A

THE CLEAN WATER ACT

Section 404 (33 USC § 1344) states in part:

”(a) The ...Chief of Engineers, may issue permits, ... for the discharge of dredged or fill material into the navigable waters...”

Section 301 (33 USC § 1311) states in part:

”(a) Except as in compliance with this section and sections ... 1344... the discharge of any pollutant by any person shall be unlawful.”

Note: Dredged or fill material is considered a pollutant under the Clean Water Act.

Section 309 (33 USC §1319) states in part:

(c) Criminal penalties –

(1) ... (A) Any person who negligently violates Section ... 1311 ... shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both ...

(2) (A) Any person who knowingly violates section ... 1311 ... shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both ...

(d) Civil penalties; ... any person who violates section ...1311...and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed \$ 25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. ...